

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

MAY 24 2016

Gary R. Ellis  
*Plaintiff,*

Case No. 1:16-cv-154

V.

Cavalry SPV I, LLC, Cavalry Portfolio  
Services, LLC and Garner & Conner, PLLC

Judge Jordan Lee

*Defendants,*

TRIAL BY JURY DEMANDED

**COMPLAINT FOR VIOLATIONS OF THE FAIR DEBT COLLECTION  
PRACTICES ACT**

**JURISDICTION AND VENUE**

1. This court has jurisdiction under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).
2. This action arises out of Defendants' multiple violations of the Fair Debt Collection Practices Act, 15 USC §1692 et seq. (FDCPA) in their illegal efforts to collect an alleged consumer debt.
3. Venue is proper in this District in that the Plaintiff resides here, the Defendants transact business here, and the conduct complained of occurred here.

**PARTIES**

4. The Plaintiff in this lawsuit is Gary Ellis, a natural person, who resides in Marion County, Tennessee and is a consumer as defined by 15 USC §1692a(3).
5. Defendant Cavalry SPC I, LLC (hereinafter "Cavalry SPV") is a debt collector as defined by 15 USC §1692a(6) and maintains CT Corporation System, 800 S. Gay St, Ste. 2021, Knoxville, TN 37929 as its registered agent.

6. Defendant Cavalry Portfolio Services, LLC (hereinafter “Cavalry Portfolio”) is a debt collector as defined by 15 USC §1692a(6) and maintains CT Corporation System, 800 Gay St, Ste. 2021, Knoxville, TN 37929 as its registered agent.

7. Defendant Garner and Conner, PLLC (hereinafter “Garner”) is a debt collector as defined by 15 USC §1692a(6) and maintains J. Michael Garner, 250 High Street, Maryville, TN 37804 as its registered agent for service of process.

### **FACTUAL ALLEGATIONS**

8. Defendants have alleged Plaintiff incurred an obligation to pay money arising out of a transaction in which money, property, insurance or services are the subject of the transaction are primarily for personal, family or household purposes, namely, a debt alleged to be originally owed to Citibank and was alleged assigned to Cavalry SPV 1 and is a “debt” as defined by 15 USC § 1692a(5).

9. Cavalry SPV is engaged in the business of purchasing defaulted consumer debts and attempting to collect them from consumers.

10. Cavalry Portfolio Services, LLC is regularly engaged in the collection of consumer debts owed or due or asserted to be owed or due another.

11. Garner is regularly engaged in collection of consumer debts owed or due or asserted to be owed or due another.

12. Cavalry SPV or Cavalry Portfolio hired Garner to collect the alleged debt from Plaintiff.

### ***False or Misleading Representation in Communications***

13. A “communication” under the FDCPA means conveying the information regarding a debt directly or indirectly to any person through any medium. 15 USC § 1692a(2).

14. On or about March 30, 2015, Plaintiff received a dunning letter from Cavalry Portfolio Services that claimed Cavalry SPV purchased a Citibank account and claimed to now be a creditor for this alleged account. Cavalry SPV stated they referred the alleged account to Cavalry Portfolio for servicing. Cavalry assigned their own account number and listed an outstanding balance of: **\$29079.63**. Language within this letter stated “Unless you notify

Cavalry within thirty days after receiving this letter that you dispute the validity of this debt or any portion thereof, Cavalry will assume this debt is valid.” ***Copy filed as Exhibit 1.***

15. On or about April 27, 2015, Plaintiff responded to Cavalry Portfolio with a dispute and debt validation demand via certified mail and asked for complete validation of the alleged debt. Plaintiff also requested the terms of assignment and a copy of any records related to this alleged account including the particular products or services sold by the collector to the alleged debtor and the dollar amount of each. ***Copy filed as Exhibit 2.***

16. On or about May 25, 2015. Cavalry Portfolio responded to Plaintiff’s validation demand with what appears to be some sort of copy with an amount due of **\$29053.63** which is a different amount than their first communication. The information sent to Plaintiff was insufficient validation and provided none of the information requested. The two different amounts due are a violation of 15 USC §1692e(2) - Character, **amount**, or legal status of the alleged debt. ***Copy filed as Exhibit 3.***

17. On or about September 29, 2015, Plaintiff received a first communication that was not a formal pleading from Garner & Conner Law Office regarding a “Late Filed Exhibit”. ***Copy filed as Exhibit 4.*** This communication did not include the required statutory language containing the mini-Miranda warning: “This is an attempt to collect a debt...communication is from a debt collector.” This is a violation of the FDCPA 15 USC §1692e(11).

18. On September 29, 2015, Cavalry SPV I, Cavalry Portfolio and Garner are in violation of the FDCPA 15 USC §1692g(B) which states “Collector must cease collection efforts until debt is validated”. Cavalry SPV I, Cavalry Portfolio, and Garner knew or should have known they had not validated the alleged debt, yet moved ahead with collection efforts by hiring Garner to file a lawsuit against the Plaintiff. The Sixth Circuit has made it very clear what information is necessary to provide validation, yet they either don’t have the proof or have failed to send to Plaintiff or share with their attorney, Garner.

19. On October 5, Plaintiff had not received the required Validation Notice from Garner. Garner is in violation of 15 USC §1692 g(a) 1-5; which is “Failure to send the consumer a 30-day validation notice within five days of the initial communication.

20. On December 4, 2015, Plaintiff received a summons for State Chancery Court that was improperly served as it was not given personally to the Plaintiff, but left with a friend at Plaintiff’s home. This is another attempt to collect an alleged debt without validation. All

three defendants again violated the FDCPA USC 15 §1692g(B) – which states, “Collector must cease collection efforts until debt is validated”.

21. On or about December 17, 2015, Plaintiff sent via certified mail a cease and desist letter, as well as a validation demand to Garner & Conner for the alleged debt listed in the State lawsuit. To date, Defendant Garner has yet to respond to this validation request and has continued with collection efforts in violation of FDCPA. ***Copy filed as Exhibit 5.***

22. On or about February 14, 2016, Defendant Garner sent Interrogatories, Production document request and admissions for Plaintiff to answer in the state lawsuit. Defendants once again ignored the validation request and continued with collection efforts which again violates 15 USC §1692g(B).

### **SUMMARY**

23. The above detailed conduct by Defendants in connection with collection of the alleged debt and in an attempt to collect the alleged debt was conduct in violation of multiple provisions of the FDCPA, but not limited to the above cited provisions of the FDCPA.

### **RESPONDEAT SUPERIOR LIABILITY**

24. In addition to their individual liability under the FDCPA, the acts and omissions of Garner as agent for Cavalry SPV and Cavalry Portfolio and who communicated with Plaintiff as further described herein, were committed within the time and space limits of its agency relationship with its principals, Cavalry SPV and Cavalry Portfolio.

25. The acts and omissions by Garner were incidental to, or of the same general nature as, the responsibilities it was authorized to perform by Cavalry SPV and Cavalry Portfolio in collecting consumer debts.

26. By committing these acts and omissions against Plaintiff, Garner was motivated to benefit its principals, Cavalry SPV and Cavalry Portfolio.

27. Cavalry SPV and Cavalry Portfolio are therefore liable to Plaintiff through the Doctrine of Respondeat Superior for the intentional and negligent acts, errors and omissions done in violation of federal law by the debt collectors employed as agents by Cavalry SPV and Cavalry Portfolio including, but not limited to violations of the FDCPA, in their attempts to collect an alleged debt from Plaintiff.

**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA), 15**  
**U.S.C. § 1692 et seq.**

28. Paragraphs 1 through 17 are re-alleged as fully set forth herein.
29. Plaintiff repeats and re-alleges each and every allegation stated above.
30. Defendants' aforementioned conduct violated the FDCPA.

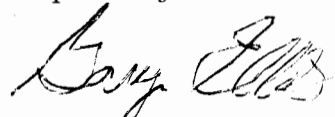
WHEREFORE, Plaintiff prays for relief and judgment against each and every Defendant as follows:

- a. Adjudging that Cavalry SPV I, LLC, Cavalry Portfolio Services, LLC, and Garner and Conner, PLLC violated the FDCPA.
- b. Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k, in the amount of \$1,000 against each and every Defendant.
- c. Awarding Plaintiff any attorney's fees and costs incurred in this action;
- d. Awarding Plaintiff post-judgment interest as may be allowed under the law;
- e. Awarding such other and further relief as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury of all issues so triable as a matter of law.

Respectfully Submitted,



Gary Ellis  
7461 Mullins Cove Rd.  
Whitwell, TN 37397  
423-903-3864

PO Box 520  
Valhalla, NY 10595



Phone: (866) 434-2995 • FAX: (914) 347-1973

[www.cavalryportfolioservices.com](http://www.cavalryportfolioservices.com)



March 20, 2015

RE: Original Institution: Citibank  
Original Account No.: 5424180448848991  
Cavalry Account No.: 19551177  
Outstanding Balance: \$29079.63



Gary Ellis  
7461 Mullins Cove Rd  
Whitwell, TN 37397-7126

Dear Gary Ellis:

Cavalry SPV I, LLC purchased the Citibank account listed above and is now the creditor for the account. Cavalry SPV I, LLC has referred the account to Cavalry Portfolio Services, LLC ("Cavalry") for servicing.

Cavalry is committed to providing you with excellent customer service, which includes treating you in a fair and respectful manner. If at any time you feel that you have not been provided with excellent customer service, please call us at (800) 861-4692.

We understand that all of the account balance may not be repaid at this time. If some of the bill can be repaid, even if it is through a monthly payment plan, we would like to hear from you. We work with our customers to find affordable repayment arrangements. Please call us at (800) 861-4692 to discuss your repayment options.

Unless you notify Cavalry within thirty days after receiving this letter that you dispute the validity of this debt or any portion thereof, Cavalry will assume this debt is valid. If you notify Cavalry in writing within thirty days from receiving this notice that you dispute the validity of this debt or any portion thereof, Cavalry will obtain verification of the debt or a copy of a judgment, if applicable, and mail you a copy of such verification or judgment. If you request it from Cavalry in writing within thirty days after receiving this notice, Cavalry will provide you with the name and address of the original creditor, if different from the current creditor.

If you want Cavalry to stop contacting you, you can write to us requesting that we cease contact. Please be aware that sending such a letter does not make the debt go away. Once we receive your letter, Cavalry will not contact you again except to let you know that there will not be any further contact, or that Cavalry intends to take a specific action on your account.

Sincerely,

Cavalry Portfolio Services, LLC

We may report information about your account to credit reporting agencies.

**THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR. SEE REVERSE SIDE FOR IMPORTANT INFORMATION CONCERNING YOUR RIGHTS**

April 27, 2015

Calvary Portfolio Services  
500 Summit Lake Drive, Suite 400  
Valhalla, NY 10595

Attn: Legal Department

Certified Mail: 7011 2970 0000 7330 6770

Thank you for your recent inquiry dated 3/20/2015 and received on 3/30/2015. This is not a refusal to pay, but a notice that your claim is disputed.

This is a request for validation made pursuant to the Fair Debt Collection Practices Act. Please complete and return the attached disclosure request form.

Please be advised that I am not requesting a "verification" that you have my mailing address, I am requesting a "validation," that is, competent evidence that I have some contractual obligation to pay you.

You should also be aware that sending unsubstantiated demands for payment through the United States Mail System might constitute mail fraud under federal and state law. Please be aware that threats of seizing funds or property without due process or proof of your claim may constitute other violations of federal and state law.

Your failure to satisfy this request within the requirements of the Fair Debt Collection Practices Act will be construed as your absolute waiver of any and all claims against me, and your tacit agreement to compensate me for costs and attorneys fees.

Sincerely,

Gary Ellis  
7461 Mullins Cove Rd  
Whitwell, TN 37397

Your reference number: 19551177

**CREDITOR DISCLOSURE STATEMENT**

Name and Address of Collector (assignee): \_\_\_\_\_

Name and Address of Debtor: \_\_\_\_\_

Account Number(s): \_\_\_\_\_

What are the terms of assignment for this account? You may attach a facsimile of any records relating to such terms.

Have any insurance claims been made by any creditor been made by any creditor or assignee regarding this account? Yes /no

Has the purported balance of this account been used in any tax deduction claim? Yes / no

Please list the particular products or services sold by the collector to the debtor and the dollar amount of each:

Upon failure or refusal of collector to validate this collection action, collector agrees to waive all claims against the debtor named herein and pay debtor for all costs and attorney fees involved in defending this collection action.

X \_\_\_\_\_  
Authorized signature for Collector

\_\_\_\_\_  
Date

Please return this completed form and attach all assignment or other transfer agreements that would establish your right to collect this debt. Your claim cannot be considered if any portion of this form is not completed and returned with the required documents. This is a request for validation made pursuant to the Fair Debt Collection Practices Act. If you do not respond as required by this law, your claim will not be considered and you may be liable for damages for continued collection efforts.



PO Box 520  
Valhalla, NY 10595

May 05, 2015

Gary Ellis  
7461 Mullins Cove Rd  
Whitwell, TN 373977126

RE:   Original Institution:   Citibank  
      Original Account No.:   5424180448848991  
      Cavalry Reference No.:   19551177  
      Open Date:               October 01, 2000  
      Charge Off Date:         July 23, 2010  
      Principal Due:          \$29079.63  
      All Other Charges:       \$0.00  
      Balance Due:            \$29079.63



Phone: (866) 434-2995 • FAX: (914) 347-1973

[www.cavalryportfolioservices.com](http://www.cavalryportfolioservices.com)

Dear Gary Ellis:

Per your request, please find enclosed the verification of your debt. Your account is now subject to resumption of collection efforts.

You may contact us at 1-800-724-1757 from 9:00am to 5:00pm, Eastern time, Monday through Friday.

Thank you for giving us the opportunity to address your concerns.

Sincerely,

Customer Service Department

THIS IS AN ATTEMPT TO COLLECT A DEBT ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR, SEE REVERSE SIDE FOR IMPORTANT INFORMATION CONCERNING YOUR RIGHTS

Page 1 of 2

000000 MC 34 A 0  
GARY ELLIS  
ATTN: ACCOUNT-CODE=7873  
WHITWELL, TN 37397-7126

CITI CARDS  
Processing Center  
Des Moines, IA 50363-0005

New Balance:  
**\$29,054.63**  
Minimum Payment Due:  
**\$29,054.63**  
Payment Due Date:  
**08/21/2010**

Print changes of address, phone number or email below.  
\* If you provide an email address, we may email you to contact you.  
About your account. We may also use your email address to send  
you information about products and services you might be eligible for.

Account Number:  
5424 1804 4884 8991  
Amount Enclosed:

Payment must be received by 5:00 PM  
local time on the payment due date.

www.citibank.com

# Citi® Diamond Preferred® Card



Account Activity  
Jun 24-Jul 23, 2010

Minimum Payment Due: New Balance:  
**\$29,054.63** **\$29,054.63**

Payment Due Date:  
**08/21/2010** Payment must be received by 5:00 PM  
local time on the payment due date.

**Late Payment Warning:** If we do not receive your  
minimum payment by the date listed above, you may  
have to pay up to a \$39 late fee and your APRs may be  
increased up to the variable Penalty APR of 29.99%.

**Minimum Payment Warning:** If you make only the  
minimum payment each period, you will pay more in  
interest and it will take you longer to pay off your  
balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about ...	And you will end up paying an estimated total of...
Only the minimum payment	1 month(s)	\$29,055

For information about credit counseling services, call 1-877-327-8188.

## Summary of Account Activity

Previous Balance	\$29,054.63
Payments	-\$0.00
Other Credits	-\$0.00
Purchases	+\$0.00
Cash Advances	+\$0.00
Fees Charged	+\$0.00
Interest Charged	+\$0.00
New Balance	\$29,054.63
Past Due Amount	\$4,706.56
Amt. Over Credit Limit	\$2,104.63
Credit Limit	\$26,950
Available Credit	\$0
Cash Advance Limit	\$12,000
Available Cash Limit	\$0
Statement Closing Date	07/23/2010
Days in Billing Cycle	30

www.citibank.com

Account Member  
GARY ELLIS

Account Number  
5424 1804 4884 8991

How to Reach Us  
1-800-925-8871

Customer Service  
80X 6500  
SIOUX FALLS, SD  
57117



Fees			
Safe	Post	Description	Amount
		TOTAL FEES FOR THIS PERIOD	0.00

Interest Charged			
Post	Description		Amount
	TOTAL INTEREST FOR THIS PERIOD		0.00

2010 Totals Year-to-Date	
Total Fees charged in 2010	\$156.00
Total Interest charged in 2010	\$1,911.56

## Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
PURCHASES			
Standard Purch	29.990% (V)	\$0.00 (D)	\$0.00
Offer 5	3.990%	\$0.00 (D)	\$0.00
ADVANCES			
Standard Adv	29.990% (V)	\$0.00 (D)	\$0.00

Help is available! Please call the toll-free number shown above to learn about our special payment options. Call Monday - Friday, 7 am to 9 pm, or Saturday, 8 am to 5 pm, Central Time. Please give us the opportunity to assist you.

Exhibit 3  
Page 2

J. Michael Conner  
Christopher W. Conner  
Trey Jackson  
J. Matthew Williams  
Bart G. Williams  
Roman Reese

Members



Exhibit 4  
Page 1

280 West Street  
PO Box 5059  
Maryville  
Tennessee  
37802-5059

MAIN (865) 964.1268  
FAX (865) 964.1753  
www.garnerconner.com

September 23, 2015

Lavoy Gudger, Clerk & Master  
CHANCERY COURT  
Marion County Courthouse  
P.O. Box 789  
Jasper, TN 37347-0789

Re: Cavalry SPV I, LLC v. Gary Ellis  
Our File No. 15-02647-0SC  
Docket No. 2015CV7819

Dear Clerk:

Please find enclosed a Late Filed Exhibit which we would appreciate you filing with the Court. If there are any questions, please feel free to contact us.

Thank you in advance for your time and assistance in this matter.

Cordially,

GARNER & CONNER

Christopher W. Conner,  
Attorney at Law

Enclosures

IN THE CHANCERY COURT FOR MARION COUNTY, TENNESSEE

CAVALRY SPV I, LLC

Plaintiff,

v.

No. 2015CV7819

GARY ELLIS

Defendant(s).

NOTICE OF LATE FILED EXHIBIT

Comes your Plaintiff, by and through counsel, and files the attached as a late filed exhibit to Plaintiff's Complaint.

Respectfully submitted this the 30 day of 9, 2015.

CHRISTOPHER W. CONNER  
(BPR #017724)  
GARNER & CONNER  
P.O. Box 5059  
Maryville, Tennessee 37802  
(865) 984-1268

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the forgoing has been duly furnished to:

Gary Ellis  
7461 Mullins Cove Rd  
Whitwell, Tennessee 37397-7126

by placing the same in the United States Mail, properly addressed, with adequate postage thereon for same to reach its destination.

This is the 25 day of 9, 2015.

Christopher W. Conner, Attorney at Law  
Our File No. 15-02647-0\SC

AFFIDAVIT OF CLAIM

STATE OF NEW YORK )  
 ) SS  
COUNTY OF WESTCHESTER )


RE: Cavalry SPV I, LLC, as assignee of Citibank

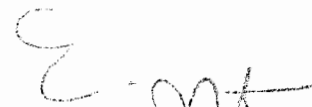
VS.  
GARY ELLIS

I, Thomas Murphy, being duly sworn on oath, depose and say:

1. I am employed by Cavalry Portfolio Services, LLC ("CPS"). CPS performs collection services for Cavalry SPV I, LLC ("Plaintiff"). I am an authorized agent for Plaintiff and am a competent person more than eighteen years of age. I am authorized to make this affidavit for Plaintiff.
2. I am familiar with the manner and method by which CPS and Plaintiff create and maintain business records pertaining to the Account as defined below.
3. In the normal course of business, CPS and Plaintiff maintain computerized account records and documents for account holders. CPS and Plaintiff maintain such records in the ordinary and routine course of business and it is their regular business practice to accurately record any business act, condition or event onto the computer record maintained for the accounts, with the entries made at or very near the time of any such occurrence.
4. I have access to and have reviewed the applicable records of CPS and Plaintiff as they relate to the Account, and I make this Affidavit based upon information from that review. Information contained in those records reflects the following:
  - a. That the Account was purchased by Cavalry SPV I, LLC on or about 03/18/2015. The original creditor is Citibank.
  - b. That the Defendant, GARY ELLIS, the account holder(s), opened an account on 10/01/2000, which account was charged off on 07/23/2010 (the "Account").
  - c. That as of 08/18/2015, the records of CPS and Plaintiff show that the defendant owed a balance of \$29,079.63.
  - d. That the Defendant is not an infant or incompetent.
5. Based on a review of the Department of Defense database, the Defendant is not a member of the United States Armed Forces who would be entitled to stay relief.
6. I certify under oath that to the best of my knowledge the above statements are true and correct.

Subscribed and sworn to before me on 08/25/2015

  
Legal Administrator

  
Notary Public, State of New York

TN-Gavin, and Conner  
11/05/17

Eddy Martinez  
Notary Public - State of New York  
No. 01MA6268052  
Qualified in Westchester County  
Commission Expires August 27, 2016

December 17, 2015

Christopher W. Connor  
Garner & Conner PLLC  
P.O. Box 5059  
Maryville, TN 37802

Dear Mr. Conner,

Certified mail #7011 2970 0000 7330 6725

**Re: Case No. 2015CV7819**

I'm writing in regard to your communication in which you asserted that I owe a debt to Calvary SPV I, LLC. This will serve as your legal notice under provisions of federal law, to cease all communication with me in regard to the above referenced debt or debts.

This letter is to inform you that I am disputing the validity of this debt, as my right under Section 809 of the Fair Debt Collections Practices Act. Further, all collection efforts must cease until you verify the debt as being valid as delineated under section 809(b) of the aforementioned act.

Please provide me with the following:

- The name and address of the original creditor.
- Proof of my responsibility to this debt in the form of a bill or accounting records from the original creditor showing how the exact amount of debt was incurred and any/all payments made on the account.

Please do not contact any credit reporting agencies until this debt is verified. If they have already been contacted regarding this matter, please notify them that I am disputing this debt. In the event that you cannot verify the debt, you should notify the credit reporting agencies of your findings.

Further communications should be in writing and limited to a notification of either: your failure to verify the debt and the closing of the matter; or consist of the records I have asked you to provide.

Sincerely,

Gary Ellis  
7461 Mullins Cove Rd  
Whitwell, TN 37397

2011 2970 0000 7330 6725

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
MARYVILLE TN 37802	
Postage	\$ 13.45
Certified Fee	\$0.00
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	N/A
Total Postage & Fees	\$ 13.45
Sent To: <b>GARNER &amp; CONNER PLLC</b>	
Street Apt. No.: <b>P.O. Box 5059</b>	
City, State, ZIP+4: <b>MARYVILLE, TN 37802</b>	

PS Form 3800, August 2005 See Reverse for Instructions

0363  
DEC 18 2015  
12/18/2015  
USPS